

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§ CASE NO. 21-33948
	§ HOUSTON, TEXAS
FIELDWOOD ENERGY, LLC,	§ MONDAY,
	§ FEBRUARY 1, 2021
DEBTORS.	§ 3:57 P.M. TO 4:47 P.M.

STATUS CONFERENCE (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:	SEE NEXT PAGE
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ALSO PRESENT:

John Robert Sergesketter

1 HOUSTON, TEXAS; MONDAY, FEBRUARY 1, 2021; 3:57 P.M.

2 THE COURT: All right. We're here in the Fieldwood
3 Energy case, it's 20-33948. What I'd like to do is just start
4 off with a report from lead counsel for the Debtor and lead
5 counsel from BP and see where we are. I think I've enabled
6 your lines, but we'll see. So let's get a report.

7 MR. GENENDER: Your Honor, Paul Genender for the
8 Debtors. Can you hear me okay?

9 THE COURT: I can, Mr. Genender.

10 MR. GENENDER: Great. Thank you, Your Honor. Good
11 afternoon. We filed a supplement to our emergency this
12 afternoon at Docket 821. Did that make it to you, Your Honor?

13 THE COURT: Yes, I've read that.

14 MR. GENENDER: Okay. Thank you so much. Your
15 Honor, we're here and we have not made -- we have not seen the
16 progress that we'd hoped would have been made in the four days
17 since we were last before you. The -- and particularly after
18 the hearing we received an SOP schedule but, you know, within
19 an hour from BP, and it had a production date of May 31, and
20 we have an issue with that. And I'll go back on that.

21 We also proactively reached out last Thursday and
22 Friday on a number of other matters, frankly delineating
23 matters that we'd hoped that BP would be undertaking while
24 other things were in process, while the permit that
25 (indiscernible) said they would be committing to get and take

1 all actions allowed by law to prepare to do the work
2 necessary -- as we understood it, to do the work necessary to
3 bring Genovesa on line by April 5. We did -- the business
4 people at BP who have reached out regrettably did not receive
5 responses, and have not received responses from their business
6 counterparts at BP as they normally would have.

7 Instead we received a letter from Ms. Heyen
8 yesterday that had a couple of statements that were
9 particularly troubling, including the statement that
10 "production from Genovesa will not commence until on or about
11 May 31", and mentioning other items on the list of things we
12 thought needed to be done, or could be done while the permit
13 work was in process on a loop agreement that is not a
14 prerequisite, and frankly acting as though the SOP itself is
15 the only schedule instead of what it really is, Your Honor,
16 which is a back up in the event that the parties cannot get
17 this well on line by April 5, which, in fact, is the
18 emergency, and the emergent situation that we brought to Your
19 Honor last week.

20 The SOP is not a solution and we have SOPs ready to
21 be filed, we paid the fee, it's ready to go, the only issue is
22 we can't agree with BP on a schedule. And, Your Honor, we
23 cannot commit a schedule with the SOP along the lines of what
24 BP has suggested because we don't think it's a realistic
25 schedule and it's not a schedule that we're comfortable

1 defending to BSEE, to the regulatory agency as an appropriate
2 schedule. We proposed a counter-schedule and haven't heard
3 back. In any event, the SOP, Your Honor, as we mentioned last
4 week, is something that comes into play in effect if the
5 parties fail to get this well on line. It's not a solution by
6 any means.

7 The loop agreement I mentioned is not a prerequisite
8 to going forward with these other matters. We do think that
9 the letter we received yesterday speaks volumes and
10 regrettably that BP is not acting as if this is an emergent
11 situation. Mr. Heyen mentioned to Mr. Perez about a call
12 earlier today, but she wanted all communications between the
13 parties to go through lawyers. We said we thought -- Mr.
14 Perez and I indicated that's a bad idea, that will slow things
15 down, and that we think that the communications should go
16 between business people so that the problems are solved,
17 instead of slow down.

18 As I think frankly more on the situation, Your
19 Honor, well, we do need a hearing to get direction from the
20 Court to direct the parties -- direct BP to bring this well on
21 line by April 5, or -- and/or to allow us to do it and compel
22 them to cooperate in letting us doing it.

23 This is a situation in which BP is frankly acting --
24 choosing to not make this a priority and we -- in Fieldwood's
25 perspective, we don't have that luxury. They have said many

1 times that they want to make sure this is all done in a safe
2 manner. Of course. But safety's not an issue here. We're
3 not suggesting, nor would we ever suggest this be done in an
4 unsafe manner. And this has just not been a high enough
5 priority based on the conduct that we've seen.

6 Your Honor, I'm not talking about pre-January 28
7 conduct because I know the Court doesn't want to hear it. I'm
8 talking about post-January 28 conduct. And as the Court
9 correctly said last Thursday, you know, days are precious
10 here. And before they -- we haven't seen the progress in
11 these four days that we certainly would have wanted to. So
12 I'll stop there and everything else is in the status update
13 and I'm happy to answer questions, Your Honor.

14 THE COURT: One more question for you, then we'll
15 hear from Ms. Heyen. When do you want your hearing?

16 MR. GENENDER: We'd like it tomorrow afternoon, if
17 possible.

18 THE COURT: Ms. Heyen?

19 MS. HEYEN: Thank you, Your Honor.

20 MR. GENENDER: Thank you.

21 MS. HEYEN: Shari Heyen and Karl Burrer for BP
22 Exploration and Production. Your Honor, BP has laser focused
23 on this. We are not dragging, we are moving forward with due
24 haste. We are delivering on what we've said that we would
25 deliver. For example, one of -- one thing that we said that e

1 would pull were the permits. We've pulled the two permits,
2 those have been filed, those applications have been filed and
3 they are pending.

4 Fieldwood committed to file two permits as well. I
5 don't know where that stands. But we would like to find that
6 out by the end of this hearing whether Fieldwood has filed its
7 permits that it is supposed to file with the requisite
8 authorities.

9 Your Honor, we did say that we would take all action
10 allowed by law to prepare to do the work. We have started --
11 we sent over the sole benefit AFEs in draft form. We sent
12 over the Fieldwood commitment for the restoration obligation
13 with respect to -- or we sent the restoration agreement, the
14 draft, as a Rule 408 communication to Mr. Genender. We have
15 not received any comments back to it. Mr. Genender did file
16 our Rule 408 communications with the Court. I'm not sure why
17 he did that, but he had done that.

18 In terms of the SOP we did send over an SOP schedule
19 as requested. We think that to do the work it could be done
20 responsibly and safely by the end of May which is the reason
21 why an SOP is filed with BSEE in the first place. The
22 response that we got back was that they didn't -- that
23 Fieldwood did not think that the SOP schedule that we sent
24 over was good enough, and they think that we could -- we
25 should be able to get this on line by April 5, whether it's

1 safe or not.

2 But the reason why the parties probably can't agree
3 on an SOP schedule is because we think it's going to take
4 until the end of May, they think it's going to take until
5 April 5, in which case they don't need to file an SOP
6 application with BSEE, which defeats the sole purpose of that.
7 And that's one thing that, you know, Fieldwood committed to do
8 at the hearing last week, was to file the SOP with BSEE.

9 Your Honor, we believe that in terms of
10 communication we've been hit with a barrage of emails and
11 telephone calls, some of which have been to people in the
12 organization at BP that don't know what's going on here in
13 terms of they're not involved with this particular process.
14 For example a communication was sent by someone at Fieldwood
15 to our marketing manager, who is, you know, he doesn't know,
16 you know, how to respond to that because he's not even
17 involved in this.

18 So in terms of the lines of communication we thought
19 it would be prudent to have conversation with Mr. Genender
20 with respect to the lines of communications, continue the
21 Rule 408 negotiations. I'm not sure that he wants to continue
22 those -- that line of communication. But what I would suggest
23 is that we would like to have a single point of contact at
24 Fieldwood so that we can direct the communications through
25 that person. If it's going to be a business person, then so

1 be it. But we would like to get some feedback from Fieldwood.

2 We did send over like I said the restoration
3 agreement. It was in draft form as were the Draft A and B.
4 But instead of giving us comments, they signed Draft A and B
5 and sent them back to us. So that's kind of -- that's
6 unfortunately where we find ourselves. We do think that we
7 are in compliance with what we told the Court last week.

8 I also think, Judge, by just a way of a suggestion,
9 it might be helpful for the parties to get -- if they can
10 resolve it through a quick mediation with a federal judge.
11 And if we can't get that done tomorrow, then, you know, we can
12 proceed with an evidentiary hearing.

13 THE COURT: All right. I'm not passing this off to
14 somebody else. I'm going to handle it tomorrow. I'm going to
15 allow people to put on their defenses, I'm going to allow
16 people to put on their case.

17 I am not sure whether we have a dispute, or whether
18 we have a contest that isn't a dispute. And I've drafted an
19 order that may actually be acceptable to all parties. I don't
20 know. I'm not telling you that this is the order that's going
21 to come out of any hearing. There may be no order come out of
22 a hearing. I may deny the relief altogether.

23 But just so that it's helpful to you all, I'm going
24 to show you what I've drafted so that in anticipation of
25 tomorrow's hearing you know at least what I'm thinking of.

1 And again, this may be acceptable to both parties. I'm going
2 to put this on the screen and see where we go.

3 (Pause in the proceedings.)

4 THE COURT: So the first paragraph orders BP to
5 comply with its contracts. I don't think that should be
6 controversial. The second paragraph says BP only has to do
7 things that are safe and that are in compliance with all
8 regulations. The third allows BP to obtain a suspension of
9 production or operations and requires the Debtor to cooperate
10 in that.

11 The fourth requires BP to proceed to come on line by
12 April 5, 2021 until such time as you get the extension. If
13 you get the extension, you can lay off. But that you've got
14 to take all the steps necessary to come on line by April 5.

15 The fifth paragraph says that if the Debtors make a
16 bonafide effort -- offer rather that they will do the work,
17 that BP either has to accept that offer or cause itself to
18 complete it on time. And finally, setting a deadline for the
19 3rd for the filing of critical path charts demonstrating how
20 it will come on line by April 5 of 2021.

21 I have to say that I've read the letters, Ms. Heyen,
22 as not being very eager to do everything that was required to
23 get there by April 5 of 2021. But this seems to leave you
24 lots of options.

25 So I want to know if the parties want their hearing

1 tomorrow or if you think doesn't accomplish what you're both
2 telling me, but I think it allows us to move down both paths
3 and see which one works. And either one that works --

4 MR. GENENDER: Your Honor --

5 THE COURT: -- is fine.

6 Mr. Genender.

7 MR. GENENDER: Your Honor, I apologize. Paul
8 Genender for the Debtors. Could I ask, or suggest that we
9 take 10 minutes and visit, 10 or 15 minutes to visit offline
10 then come back to you. I think that might make sense because
11 I think you've given us some stuff to consider here.

12 THE COURT: Ms. Heyen?

13 MS. HEYEN: Your Honor, that works fine for us, a 10
14 or 15 minute break is fine. Maybe we should come back at
15 4:30?

16 THE COURT: So may I ask whether you're talking
17 about a 10 or 15 break to meet with your own teams or to meet
18 with each other? I'm not sure what you all mean.

19 MS. HEYEN: I think we're --

20 MR. GENENDER: Your Honor --

21 MS. HEYEN: -- meeting with our side, our clients.

22 MR. GENENDER: Your Honor, Paul Genender. I was
23 thinking that we would confer internally on the Fieldwood
24 side.

25 THE COURT: So you both want to do your own internal

1 conferences to see if what I've suggested might make sense?
2 And I got it that you --

3 MS. HEYEN: Yes, Your Honor.

4 MR. GENENDER: Yes, and --

5 THE COURT: And I've got time tomorrow afternoon.
6 I've cleared out some other times so that we can start a
7 little earlier than expected if we need to.

8 Sure, we'll come back -- what time did you suggest,
9 Ms. Heyen?

10 MS. HEYEN: 4:30 p.m., Your Honor.

11 THE COURT: See you all then. Thank you.

12 MS. HEYEN: Thank you.

13 MR. GENENDER: Thank you, Judge.

14 (Recess from 4:12 p.m. to 4:30 p.m.)

15 THE COURT: All right. Mr. Genender and Ms. Heyen,
16 let's move ahead with the hearing if we could, please.

17 MR. GENENDER: Thank you, Your Honor. Your Honor,
18 who do you want to proceed?

19 THE COURT: Probably Ms. Heyen ought to go first
20 because I think that your needs are more obvious than hers.
21 So I'm going to let her go first.

22 MS. HEYEN: Great. Thank you, Your Honor. So we
23 have some questions just for clarification with respect to the
24 outline here. So if you're -- I'll just address those. The
25 first point which is that BP is obligated to perform under the

1 LOPS agreement and the PHA, should we make that BP and
2 Fieldwood are both ordered to perform under the contracts and
3 agreements?

4 THE COURT: Yes, I think we should.

5 MS. HEYEN: Thank you, Your Honor. With respect to
6 Paragraph Number 2 --

7 THE COURT: I think it ought to be joint as well.

8 MS. HEYEN: Thank you.

9 THE COURT: All right.

10 (Pause in the proceedings.)

11 THE COURT: All right.

12 MS. HEYEN: And when you say applicable safety
13 protocols BP has internal safety protocols so if we could get
14 some clarity as to the term applicable.

15 THE COURT: I'm not going to require you to violate
16 any safety protocols, but I may make you work 24 hours a day.
17 And so I just -- it's not that I'm going to -- I don't know
18 that safety protocols that can be implemented if you work 24
19 hours a day don't need to be followed. But I'm not going to
20 make you violate either an internal or an external safety
21 protocol. But I'm not going to just say -- look, you want
22 more time to do it, you got to do your best to meet the
23 contract and the safety protocols, you've got to do them both.

24 MS. HEYEN: Thank you, Your Honor. With respect to
25 Paragraph Number 3, I think that Fieldwood -- it's Fieldwood's

1 obligation to obtain the suspension of production from BSEE.
2 And we are happy to fully cooperate with the Debtors to obtain
3 the SOP. The breakdown has been that in terms of reaching an
4 agreement with respect to what is a -- what the deadline
5 should be. So for example Fieldwood says April 4 or 5, we say
6 it's May 31. And if it's -- it seems like it's all parties'
7 best interest to obtain an extension through and including
8 May 31. Otherwise why apply?

9 THE COURT: What I'm worried about is --

10 MR. GENENDER: Do you --

11 THE COURT: I'm going to get to you, Mr. Genender.

12 What I'm worried about is if you do get an
13 extension, a lot of this problem goes away. I am worried
14 about anything that says, We're going to take the foot off the
15 pedal until you actually have that extension in hand. And
16 we'll go -- I don't know how we deal with a date, and we can
17 go back and talk about that. But what I don't want to do is
18 for, BP, since I'm talking to you, to say, Well, we can't make
19 it by April 5 unless do we X, Y and Z. And what I'm telling
20 you is, I need you to do X, Y and Z. We're going to meet
21 April 5 until the relief is granted by the United States.

22 MS. HEYEN: And I guess what I'm struggling with,
23 Your Honor, is that we all agree that -- well, we think that
24 the Debtors should apply for the SOP and the problem with that
25 is, is that to get the extension we need to put forth a time

1 line by which we think that the well could come on line
2 safely. And so how do we come to an agreement? I mean if
3 Fieldwood says April 5 and we say it's May 31, how do we reach
4 agreement on that point is what I'm trying to fall for.

5 THE COURT: I will just tell you that my
6 experience --

7 MR. GENENDER: Your Honor --

8 THE COURT: -- with the federal regulators has been
9 that they are rational players. And if you tell them it's
10 going to be a stretch, we're going to do our best to get this
11 done by April 15 -- April 5, but we know things go wrong. And
12 so we're asking for an extension in case things go wrong.
13 Maybe that doesn't work. I mean I haven't read the regs here,
14 but I have not found these regulators to be irrational. And
15 so I don't know that this date disagreement should play as
16 hard for a role as what you are. But maybe I am wrong about
17 that, and I'm perfectly willing to listen to it.

18 But it can't be that you have to tell them that, you
19 know, if things go well, we can meet it, but if we have a
20 glitch, we can't, and then they would say, Well, then you
21 can't have an extension because we're going to insist no
22 glitches. But that's just not been my experience with them
23 and they have been rational players out there.

24 So I wonder if we shouldn't have the folks that are
25 experts in this confer, and, you know, maybe they're all here

1 online with us, and talk about whether you can't
2 simultaneously have a plan to get it done by April 5 and file
3 an application for an SOP. I don't know why they have to be
4 exclusive.

5 Mr. Genender, go ahead. Well, I mean he's eager.

6 MR. GENENDER: Your Honor, you know, can I make a
7 suggestion because I think I'd love to hear Ms. Heyen's
8 comments on 4 through 6. And then can we get back to 3
9 because I may have an idea that might work if we can get her
10 comments on 4 through 6.

11 THE COURT: Sure.

12 MS. HEYEN: Thank you, Your Honor. I was just going
13 to say that our experience is typical of what you have
14 described. But I think where the communication has broken
15 down is, you know, getting that insurance and, you know, if
16 something does wrong, the, you know, we need this outside
17 date. And so that's what we're having a problem with. But we
18 can come back to that if --

19 THE COURT: Okay.

20 MS. HEYEN: -- Mr. Genender wants to.

21 THE COURT: Okay.

22 MS. HEYEN: On Number 4 --

23 (Pause in the proceedings.)

24 MS. HEYEN: -- so under the LOPS agreements
25 Fieldwood is supposed to pay for -- here, I've got the

1 document right here -- it has to bear the sole risk cost and
2 expense and future cost of restoring the LSPS to its condition
3 prior to the conduct of the sole benefit operation.

4 So my question is, who is going to pay for these
5 repairs. We need to make it clear as to whoever's going to
6 pay for these repairs, how are they going to be -- when are
7 those payments going to be made. If there is a liability --
8 if there -- you know, I mean something happens out there, who
9 is going to take on that liability.

10 THE COURT: I would have thought, and, you know, if
11 we need to make it more clear, we can, but I would have
12 thought that Paragraph 1 that says both parties have to comply
13 with the contract, that whatever the contract says, the
14 contract says in that regard and both parties have to comply
15 with it. Does that not cover that?

16 (Pause in the proceedings.)

17 THE COURT: We'll come back to it.

18 MS. HEYEN: Okay. Yeah, well, --

19 THE COURT: Let's go -- let's go to the other
20 comments because --

21 MS. HEYEN: Right.

22 THE COURT: -- you know, it may be

23 MS. HEYEN: Okay.

24 THE COURT: -- I'm missing something here.

25 MS. HEYEN: Okay. Thank you, Your Honor.

1 (Pause in the proceedings.)

2 MS. HEYEN: I don't know about Number 5 in terms of
3 I don't know that the Debtors have made a bonafide offer. But
4 we can table that. Are they -- is the Court -- with respect
5 to Number 6 is the Court asking that BP file all critical path
6 charts with the Bankruptcy Court?

7 THE COURT: That's what I'd written. I think
8 eventually, if there's a dispute about whether the critical
9 path is being met, I'm going to have to look at those. I
10 don't know if there's anything confidential about how to get
11 this done, but those can be filed under seal if that's
12 proprietary as to how you meet it.

13 But what I want -- when I read what Mr. Genender
14 filed and when I'm reading the correspondence, it looks like
15 people are almost talking past each other. You know, one side
16 is saying, Well, we don't need to start mobilizing a vessel
17 until after we get a permit, or things of that nature. I
18 want -- the people that do this I believe do it with critical
19 path charting. And it actually shows, if you start on April 5
20 and say, Okay, we've got to get everything done by April 5,
21 what's our last date to start, you know, getting a vessel
22 under contract.

23 And that's why I wanted to see a critical path chart
24 to be sure people have thought through it and I'm not going to
25 get down to April 5 and somebody says, Well, it's just not

1 possible at this late date to contract someone to put the
2 safety lights up on time so that we can, you know, use the
3 platform. I mean I don't know what the issues are going to
4 be. But that's why I wanted a critical path to be thought of
5 now instead of later.

6 We don't have much time and without a critical path
7 I don't think we'll have a way of everybody cooperating and
8 getting it done. That was why I was suggesting that, and it
9 is irrelevant to me whether it is filed under seal if it's
10 proprietary, filed publicly, exchanged between the parties.
11 But then, you know, if you all have a complaint about it, it's
12 very hard for me to see it that way.

13 MS. HEYEN: Thank you, Your Honor. And under the
14 LOPS agreement there is a requirement that a reinstatement
15 agreement be memorialized, because what is happening with this
16 temporary flow line is it takes -- it creating a different
17 pathway for this. So this is a loop system, and so the
18 temporary fix would change that configuration and so the
19 configuration needs to restore -- be restored to its original
20 configuration which is a loop system. And so part of the
21 bigger issue is once we -- once the temporary fix is in place,
22 they'll have to restore it to its original configuration to
23 the loop system. And so we need the commitment by Fieldwood
24 to get it back, to restore it to its original condition.

25 THE COURT: All right.

1 MS. HEYEN: And so that was part of it. We sent
2 over a draft agreement, a draft restoration agreement and we
3 also sent over draft A and Bs. So those are in Fieldwood's
4 court right now. But that's part of the LOPS agreement
5 requirement.

6 THE COURT: Okay. Mr. Genender.

7 MR. GENENDER: Your Honor, I think that the
8 changes -- the changes that have been made are, I think are
9 acceptable to the Debtors. I think including to Paragraph 3,
10 I'm confident that the -- you know -- you know, they attempt
11 to obtain any, I think that's fine. I think that as it is I
12 think that the Debtors would agree this provides them with a
13 certainty and pick an option that they want and need to
14 address this emergent situation.

15 THE COURT: And what is your client's determination
16 or judgment about whether one can simultaneously have a really
17 tight critical path to finishing something by April 5 and also
18 applying for an SOP in case you miss that critical path?

19 MR. GENENDER: I think Fieldwood's view is that it
20 can do both and that we -- BSEE will address the SOP and it,
21 you know, so be it, but it is okay to do both. And frankly,
22 Your Honor, what you've rolled out here I think addresses the
23 concerns, some of the concerns we had with the schedule sent
24 over, that would go with the SOP because it clarifies what
25 we're trying to do, and then makes clear that the SOP is

1 backup, not Plan A.

2 THE COURT: And what is your answer with respect to
3 the temporary fix that's going to destroy the normal pathway
4 and therefore you have to agree to restore the loop.

5 MR. GENENDER: We disagree with it. And if it's
6 okay I might let Mr. Sergesketter speak to that, if that's
7 okay, Your Honor.

8 THE COURT: It's fine, although clearly I'm not
9 going to get this resolved on that question this afternoon.
10 I'm happy to hear him. I'm also happy to let the parties
11 confer about that. But maybe it makes some sense to hear him
12 so that Ms. Heyen can talk to her clients about that.

13 Let me go ahead and get his line activated. What is
14 the restoration issue, Mr. Sergesketter?

15 MR. SERGESKETTER: John Robert Sergesketter. The
16 loop already had had its integrity violated because of the
17 leak that was discovered in it. And so we're not violating
18 the integrity or use of the loop as a whole. That already has
19 happened. We are fully in agreement that we do want that loop
20 restored and that is the long term plan. Right? So we're
21 fully on board with that.

22 As far as having to get that agreement fully nailed
23 down before we go forward with the single flow line project,
24 absolutely does not have to happen. We've told BP over and
25 over we are on board with that loop repair being done. But

1 let's -- first the deadline we are facing now is bringing
2 Genovesa on so we don't lose the lease.

3 THE COURT: So, Mr. Sergesketter, do you agree that
4 if there are any incremental costs caused by this order for
5 bringing the loop back on line that those are your
6 responsibility?

7 MR. SERGESKETTER: Your Honor, we absolutely are
8 taking the costs that are involved with the single flow line
9 project, yes. That's going to be on us and our co-interest
10 workers in the Genovesa well. There will be no other --

11 THE COURT: Including any incremental costs of the
12 restoration of the loop?

13 MR. SERGESKETTER: Your Honor, I need to be careful
14 when I answer that because I don't want my Ops guys to pull me
15 here, but I don't believe there will be any. There are some
16 costs that are going to have to be incurred to get that loop
17 restored. Some of those will happen now, some will happen
18 down the road. But we've already worked out who are fine for
19 the costs.

20 The dispute, Your Honor, isn't on the cost, it's on
21 whether we should float BP's portion of the loop restoration
22 costs now or should they have to pay them now and not later.
23 We could work through that issue, Your Honor. That's not a
24 deal breaker at all. Leave that to the parties, we'll get
25 that part done.

1 (Pause in the proceedings.)

2 MR. SERGESKETTER: And, Your Honor, may we confer
3 internally on that new addition you just added, if you don't
4 mind, before I say yes, that's fine. I want to be cautious.

5 THE COURT: No, you may, but it seems to me that
6 it's fair for BP to say, If you're going to order us to call -
7 - to cause incremental costs to be incurred, that shouldn't be
8 our problem. And I think that's probably right. On the other
9 hand, if they already have a duty to restore it based on the
10 leak, and I don't know who does or doesn't, that's not an
11 incremental cost of this, that's a cost that's already in
12 existence. And so it's -- I should say today it is the
13 incremental costs.

14 And then I agree with you, I think that the business
15 folks ought to be able to meet and decide whether a cost is
16 incremental or not, and if not, you know, that's what trials
17 are about. But it shouldn't --

18 MR. SERGESKETTER: Judge --

19 THE COURT: -- be ambiguous to BP that -- you know,
20 I shouldn't make them bear additional costs that are yours to
21 bear.

22 MR. SERGESKETTER: The concept, Your Honor, makes
23 absolute sense. I just want to make sure we do tighten up the
24 language so it doesn't come back to bite us. But the concept
25 we're on board with I believe.

1 THE COURT: Yeah, I'm not going to sign --

2 MR. SERGESKETTER: I'm not going to --

3 THE COURT: -- I'm not signing an order this
4 afternoon. I put this out so that parties could think about
5 whether this made sense, and it sounds like it's making some
6 sense to let you all work through this is what it's sounding
7 like to me.

8 MR. GENENDER: Your Honor, Paul Genender. Can I
9 make a suggestion to which, Your Honor -- to Paragraph 7
10 subject to Mr. Sergesketter's comment? It seems like it might
11 make sense to say it, to the extent that there are incremental
12 loop restoration costs incurred as a either direct or sole
13 consequence of the order so that it's clear that it's
14 something -- something like that -- certain clarification
15 might help, Your Honor.

16 THE COURT: It can also hurt. I think if there's a
17 cost incurred, there's a cost incurred and I shouldn't try and
18 define that on the spur of the moment. I'm perfectly happy
19 for the parties to work through the concept.

20 Let me ask this, I appreciate what both parties are
21 telling me about my probably clumsy draft, and what I would
22 like to do is to get you all copies of this draft into your
23 hands this afternoon and then schedule a hearing tomorrow
24 where either you all have an agreement at the beginning of the
25 hearing, or we call, you know, the first witness so that we

1 can decide what to do. But to give you all enough time with
2 the business people to work through it as Mr. Sergesketter
3 suggested. And frankly I think as Ms. Heyen suggested. You
4 know, they don't know some stuff here and it's fair that they
5 don't know it at this point. Does that --

6 MR. SERGESKETTER: Your Honor, it seems to me, I was
7 concerned when you first typed 7 because it was happening so
8 quickly. As I read it now, I think we're fine with that. So
9 to be perfectly honest with you, with the changes you've
10 already made to this order based on Ms. Heyen's request, I
11 think we're on board.

12 THE COURT: Well, that's -- I need Ms. Heyen -- you
13 know, Fieldwood's a big company, they're bigger, but let's let
14 her get all of her approvals too and see what we need to get
15 done.

16 Ms. Heyen, are you okay with working on this
17 overnight and into the morning and then we either have an
18 agreement or not tomorrow afternoon, and if we don't, we, you
19 know, we start the witnesses?

20 MS. HEYEN: Your Honor, we will work on this
21 overnight. That's fine, and I appreciate the -- Your Honor's
22 attention to this. I think in Number 3 I think it needs to be
23 filled with must attempt to pay the SOP for one thing and then
24 we'll walk through the other points in this proposal with our
25 client and we can come back to the Court tomorrow.

1 THE COURT: I actually think, when I'd first drafted
2 it, that it was you doing it. I wanted to a may, but I think
3 if it's them doing it, it probably ought to be a must. So
4 I've made that change in the temporary draft.

5 MR. SERGESKETTER: That's perfect.

6 MS. HEYEN: Thank you.

7 MR. SERGESKETTER: And, Judge, that -- Judge, I
8 always thought it was -- must or shall will be fine with the
9 Debtors, so that's fine. Thank you.

10 THE COURT: I don't -- I do my very best never to
11 use the word shall because nobody knows what it means.

12 (Laughter.)

13 THE COURT: I try to cross that out when you put it
14 in the proposed orders.

15 MR. SERGESKETTER: And must is a shorter -- and must
16 is a shorter word, which is a good thing.

17 THE COURT: Okay. Why don't I just call this
18 Court's notice of draft of possible -- and that way I can
19 just have that filed on the docket sheet and everybody who's
20 listening can have a copy of it and I'm not going to sign it
21 and no one will then -- everyone will then have a fair
22 opportunity. Is that okay if we do something like that?

23 MR. GENENDER: Yes, Your Honor.

24 MR. SERGESKETTER: Fine, Your Honor.

25 MS. HEYEN: That's fine, Your Honor. Thank you.

1 THE COURT: So I haven't let anybody talk but the
2 two of you all in terms of sides. I've got a lot of other
3 people on the phone. If anyone else wants to have a say this
4 afternoon, would you please press five star on your phone.

5 (Pause in the proceedings.)

6 THE COURT: All right. Let me get to you now. Mr.
7 Skelton.

8 MR. SKELTON: Yes, Judge. As stated at the previous
9 status conference, I represent the two other working interest
10 owners in this prospect, and as the Court's suggested, the
11 path is a good one, it will collaborate and (glitch in the
12 audio) and see if we can get something worked out here on this
13 order.

14 THE COURT: Okay. So I want to set enough time to
15 leave you all as much time as I can to work and then enough
16 time to finish the hearing if this doesn't work. I would
17 suggest we come back tomorrow at 3:00, but we can come back a
18 little earlier or a little later if I haven't calibrated that
19 the way that you all think it ought to be. Let me hear about
20 three o'clock tomorrow for -- either we have an agreement --

21 MS. HEYEN: Your Honor, that works --

22 THE COURT: -- or we proceed. I'm sorry, go ahead.

23 MS. HEYEN: Thank you, Your Honor. Shari Heyen for
24 BP. That works for us to come back at 3:00 p.m.

25 MR. GENENDER: Your Honor, it works great if you

1 have an agreement, but if it doesn't, it might be tight,
2 depending on how the evidence goes so. But I guess it's fine.
3 I'm not getting any major head nods or otherwise from my
4 teammates, so that's fine. Let's just do it, Judge.

5 THE COURT: Okay. Mr. Barr just gave you a --

6 MR. GENENDER: Your Honor, what they --

7 THE COURT: -- he gave me a thumbs up and that
8 meant he gave you a thumbs down. So I'll set it for 3:00.

9 (Laughter.)

10 MR. GENENDER: Right. Judge, I called him after the
11 last hearing and I told him he'd be allowed to catch -- or
12 he'd only call curve balls on the inside or something like
13 that.

14 Your Honor, one thing I meant to tell you at the
15 outset, which is, is that we did work out with the US Trustee
16 agreement on the sealing order and that that will forthcoming.
17 But I wanted to let the Court know that, and we very much
18 appreciate the US Trustee's cooperation in that regard.

19 THE COURT: Thank you. I know Mr. Statham is on the
20 phone, and if he wishes to speak, he can press five star,
21 although I'm not going to require that at all.

22 If anybody else wants to speak, please press five
23 star one time on your phone. Otherwise we'll adjourn till
24 tomorrow at 3:00

25 (No audible response.)

1 THE COURT: All right. We are --

2 MS. HEYEN: Thank you, Your Honor.

3 THE COURT: -- we're adjourned till 3:00 tomorrow.
4 I am -- never done one like this before on this program. Let
5 me just -- Ms. Do, if --

6 MR. GENENDER: Judge, you have a double apostrophe
7 instead of one apostrophe --

8 THE COURT: Whoops.

9 MR. GENENDER: -- on the Court's --

10 THE COURT: Thank you.

11 Ms. Do, if you're listening, can you come out for a
12 second?

13 (Pause in the proceedings.)

14 THE COURT: Can that happen, can you docket this as
15 a Court's notice of a proposed order?

16 THE CLERK: I think you have notice, Judge.

17 THE COURT: Okay. Okay. She said she can do that
18 off what I've done. I just didn't want to mess up the
19 technology. You'll get it in just a few minutes. I've sent
20 it to docketing. Okay. Thank you all.

21 MR. GENENDER: Thank you, Your Honor.

22 MS. HEYEN: Thank you, Your Honor.

23 MR. SERGESKETTER: Thank you, Your Honor.

24 THE COURT: Thank you. Good night.

25 MR. GENENDER: Have a good night.

* * * * *

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